

ASSEMBLY BILL

No. 1749

**Introduced by Committee on Governmental Organization
(Jerome Horton (Chair), Plescia (Vice Chair), Aghazarian,
Bermudez, Calderon, Chavez, Garcia, Levine, Liu, Torrico, and
Yee)**

March 9, 2005

An act to amend Sections 22978.4, 22978.7, 22979.2, and 22979.7 of the Business and Professions Code, and to add Section 30361.5 to the Revenue and Taxation Code, relating to cigarettes and tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

AB 1749, as introduced, Committee on Governmental Organization. Cigarettes and tobacco products.

(1) The California Cigarette and Tobacco Products Licensing Act of 2003 provides for the licensure, by the State Board of Equalization, of manufacturers, distributors, wholesalers, importers, and retailers of cigarette or tobacco products that are engaged in business in California and prohibits retailers, manufacturers, distributors, and wholesalers from distributing or selling those cigarette and tobacco products unless they are in compliance with those licensure requirements.

The act requires each distributor and each wholesaler to include information on each invoice for the sale of cigarettes or tobacco products, including a statement that all California cigarette and tobacco product taxes are included in the total amount of the invoice. The act provides that failure to comply with that requirement constitutes a misdemeanor.

This bill would delete the requirement that the above tax statement be included on each invoice for the sale of cigarettes or tobacco

products and would instead require that the amount of excise taxes due to the board by the distributor on the sale of cigarettes and tobacco products be included on the invoice. By changing the definition of a crime, this bill would impose a state-mandated local program.

(2) The act authorizes the board or a law enforcement agency to seize any cigarettes or tobacco products that do not meet the act's requirements. Upon a finding that any distributor, wholesaler, manufacturer, or importer has violated any provision of the act, the act authorizes the board, upon a first offense, to revoke or suspend the license or licenses of the distributor, wholesaler, manufacturer, or importer, and, upon a second or any subsequent offense, impose a civil penalty in an amount not to exceed the greater of 5 times the retail value of the cigarettes or tobacco products or \$5,000.

This bill would clarify that, upon a 2nd or subsequent offense, the board is authorized to impose a civil penalty in an amount not to exceed the greater of 5 times the retail value of the seized cigarettes or tobacco products or \$5,000.

(3) The act requires all manufacturers and all importers that begin operations in the state after January 1, 2004, to be charged an administration fee commensurate with their respective market share of cigarettes manufactured or imported by the manufacturer, and sold in this state during the next calendar year as estimated by the board.

This bill would clarify that all manufacturers and all importers that begin operations in the state after January 1, 2004, shall be charged a fee commensurate with their respective market share of cigarettes manufactured or imported by the manufacturer or importer, and sold in this state during the next calendar year as estimated by the board.

(4) The State Board of Equalization administers various tax and fee programs, including the Sales and Use Tax Law and the Cigarette and Tobacco Products Tax Law. The tax and fee programs administered by the board generally require any person who collects tax or fee reimbursement in excess of the amount due to either refund the excess to their customer or remit the excess to the state.

This bill would apply these reimbursement provisions to the taxes imposed under the Cigarette and Tobacco Products Tax Law.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22978.4 of the Business and
2 Professions Code is amended to read:
3 22978.4. (a) Each distributor and each wholesaler shall
4 include the following information on each invoice for the sale of
5 cigarettes or tobacco products:
6 (1) The name, address, and telephone number of the
7 distributor or wholesaler.
8 (2) The license number of the distributor or the wholesaler as
9 provided by the board.
10 (3) ~~The following statement: "All California cigarette and~~
11 ~~tobacco product taxes are included in the total amount of this~~
12 ~~invoice."~~ *amount of excise taxes due to the board by the*
13 *distributor on the sale of cigarettes and tobacco products.*
14 (4) The name, address, and license number of the retailer,
15 distributor, or wholesaler to whom cigarettes or tobacco products
16 are sold.
17 (5) An itemized listing of the cigarettes or tobacco products
18 sold.
19 (b) Each invoice for the sale of cigarettes or tobacco products
20 shall be legible and readable.
21 (c) Failure to comply with the requirements of this section
22 shall be a misdemeanor subject to penalties pursuant to Section
23 22981.
24 SEC. 2. Section 22978.7 of the Business and Professions
25 Code is amended to read:
26 22978.7. In addition to any other civil or criminal penalty
27 provided by law, upon a finding that any distributor or any
28 wholesaler has violated any provision of this division, the board
29 may take the following actions:
30 (a) In the case of the first offense, the board may revoke or
31 suspend the license or licenses of the distributor or the
32 wholesaler pursuant to the procedures applicable to the

1 revocation of a license set forth in Section 30148 of the Revenue
2 and Taxation Code.

3 (b) In the case of a second or any subsequent offense, in
4 addition to the action authorized under subdivision (a), the board
5 may impose a civil penalty in an amount not to exceed the
6 greater of either of the following:

7 (1) Five times the retail value of the *seized* cigarettes or
8 tobacco products.

9 (2) Five thousand dollars (\$5,000).

10 SEC. 3. Section 22979.2 of the Business and Professions
11 Code is amended to read:

12 22979.2. (a) On or before January 1, 2004, every
13 manufacturer and every importer shall pay to the board an
14 administration fee. The amount of the administration fee shall be
15 one cent (\$0.01) per package of cigarettes (1) manufactured or
16 imported by the manufacturer or the importer and (2) shipped
17 into this state during the 2001 calendar year as reported to the
18 board. The board shall notify each manufacturer and each
19 importer of the amount due under this section.

20 (b) This section shall apply to every manufacturer and every
21 importer required to be licensed pursuant to Section 22979. All
22 manufacturers and all importers that may become eligible for
23 licensure on or after December 1, 2003, shall be notified by the
24 board of the appropriate fee due and shall pay that fee within 90
25 days of notification.

26 (c) All manufacturers and all importers that begin operations
27 in the state after enactment of this division shall be charged a fee
28 commensurate with their respective market share of (1) cigarettes
29 manufactured or imported by the manufacturer *or the importer*
30 and (2) sold in this state during the next calendar year as
31 estimated by the board. The fee shall be at an amount not less
32 than that paid pursuant to subdivision (a) by the smallest
33 manufacturer, but may not be more than that paid by the eighth
34 largest manufacturer.

35 (d) The board shall administer this fee in accordance with the
36 Fee Collection Procedures Law, Part 30 (commencing with
37 Section 55001) of Division 2 of the Revenue and Taxation Code.

38 SEC. 4. Section 22979.7 of the Business and Professions
39 Code is amended to read:

1 22979.7. In addition to any other civil or criminal penalty
2 provided by law, upon a finding that a manufacturer or importer
3 has violated any provision of this division, the board may take
4 the following actions:

5 (a) In the case of the first offense, the board may revoke or
6 suspend the license or licenses of the manufacturer or importer
7 pursuant to the procedures applicable to the revocation of a
8 license set forth in Section 30148 of the Revenue and Taxation
9 Code.

10 (b) In the case of a second or any subsequent offense, in
11 addition to the action authorized under subdivision (a), the board
12 may impose a civil penalty in an amount not to exceed the
13 greater of either of the following:

14 (1) Five times the retail value of the *seized* cigarettes or
15 tobacco products defined as cigarettes under this section.

16 (2) Five thousand dollars (\$5,000).

17 SEC. 5. Section 30361.5 is added to the Revenue and
18 Taxation Code, to read:

19 30361.5. When an amount represented by a person to a
20 customer as constituting reimbursement for taxes upon the
21 distribution of tobacco products pursuant to this part is computed
22 upon an amount that is not taxable or is in excess of the tax
23 amount and is actually paid by the customer to the person, the
24 amount so paid shall be returned by the person to the customer
25 upon notification by the State Board of Equalization or the
26 customer that an excess has been ascertained. If the person fails
27 or refuses to do so, the amount so paid, if knowingly or
28 mistakenly computed by the person upon an amount that is not
29 subject to the tax imposed by this part or that is in excess of the
30 tax amount, shall be remitted by that person to this state. Those
31 amounts remitted to the state by the person shall be credited by
32 the board to any amounts due and payable from that person that
33 are subject to this part and that are based on the same activity,
34 and the balance, if any, shall constitute an obligation due from
35 the person to this state.

36 SEC. 6. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the

1 penalty for a crime or infraction, within the meaning of Section
2 17556 of the Government Code, or changes the definition of a
3 crime within the meaning of Section 6 of Article XIII B of the
4 California Constitution.

O